

# Exhibit 3

Charlotte Rutherford

1

1 CAUSE NO. 2014-13621

2 SCHLUMBERGER LIMITED AND ) IN THE DISTRICT COURT  
 3 SCHLUMBERGER TECHNOLOGY )  
 CORPORATION, )  
 4 PLAINTIFF(S), )  
 5 VS. ) HARRIS COUNTY, TEXAS  
 6 CHARLOTTE RUTHERFORD, )  
 7 DEFENDANT(S). ) 127TH JUDICIAL DISTRICT

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9 ORAL AND VIDEOTAPED DEPOSITION OF

10 CHARLOTTE RUTHERFORD

11 MAY 29, 2014

12 Volume 1 of 1

13 \*\*\*\*\*

14 ORAL AND VIDEOTAPED DEPOSITION of CHARLOTTE  
 15 RUTHERFORD, produced as a witness at the instance of the  
 16 Plaintiffs, and duly sworn, was taken in the above-styled  
 17 and numbered cause on May 29, 2014, from 9:07 a.m. to  
 18 5:38 p.m., before Tammy S. Brown, CSR in and for the State  
 19 of Texas, reported by machine shorthand, at the offices of  
 20 AHMAD, ZAVITSANOS, ANAIPAKOS, ALAVI & MENSING, P.C.,  
 21 One Houston Center, 1221 McKinney Street, Suite 3460,  
 22 Houston, Texas, pursuant to the Texas Rules of Civil  
 23 Procedure and the provisions stated on the record.

24

25

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ALSO PRESENT:

Mr. Johnny Spencer - The Videographer

1	INDEX		
2			Page
3	Appearances.....		2
4	Stipulations.....		6
5	CHARLOTTE RUTHERFORD		
6	By Mr. Grant.....		8
7	By Mr. Ahmad.....		273
8	Changes and Signature.....		275
9	Reporter's Certificate.....		277
10	EXHIBITS		
11	No.	Description	Page
12	Exhibit 1	Defendant's Anti-SLAPP Motion	
13		to Dismiss.....	11
14	Exhibit 2	Plaintiffs' Original	
15		Petition, Ex Parte	
16		Application for Temporary	
17		Restraining Order, Temporary	
18		Injunction, and Permanent	
19		Injunction and Motion of	
20		Expedited Discovery.....	45
21	Exhibit 3	United States Patent	
22		US 7,986,319 B2.....	52
23	Exhibit 4	Original Complaint for Patent	
24		Infringement.....	76
25	Exhibit 5	LinkedIn Profile of Charlotte	
26		Rutherford.....	110
27	Exhibit 6	Performance Appraisal and	
28		Development Plan - Charlotte	
29		Rutherford	
30		(SLB 00000460 - 467).....	159
31	Exhibit 7	Cover Page - "Intellectual	
32		Property Strategy" -	
33		Presented by Charlotte	
34		Rutherford - Deputy General	
35		Counsel IP - 17 Jan 2011 -	
36		Schlumberger Secret.....	177
37	Exhibit 8	Declaration of David Cowen.....	182
38	Exhibit 9	June 3, 2013 Acacia Press	
39		Release.....	233
40	Exhibit 10	December 9, 2013 Acacia Press	
41		Release.....	240
42			
43			
44			
45			
46			
47			
48			
49			
50			
51			
52			
53			
54			
55			
56			
57			
58			
59			
60			
61			
62			
63			
64			
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66			
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85			
86			
87			
88			
89			
90			
91			
92			
93			
94			
95			
96			
97			
98			
99			
100			

1	EXHIBITS		
2	No.	Description	Page
3	Exhibit 11	Schlumberger Patent and Confidential Information	
4		Agreement.....	247
5	Exhibit 12	Schlumberger Business and Employee Conduct Policy	
6		Statement.....	248
7	Exhibit 13	Schlumberger Confidentiality and Information Security	
8		Policy.....	249
9	Exhibit 14	Schlumberger Data Privacy and Protection Policy.....	250
10	Exhibit 15	Schlumberger Conflict of Interest Policy.....	250
11	Exhibit 16	Schlumberger Inventions Ownership and Confidential Information Policy.....	251
12	Exhibit 17	"Schlumberger - Our Values, Conduct, and Behavior" .....	251
13	Exhibit 18	Schlumberger Code of Conduct...	252
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 THE VIDEOGRAPHER: Tape 1, on the record at  
2 9:07.

3 CHARLOTTE RUTHERFORD,  
4 having been first duly sworn, testified as follows:

5 THE REPORTER: Pursuant to the Texas Rules?

6 MR. AHMAD: Yes, and she will read and sign.

7 And then we -- we have some people here who  
8 we probably need to formalize that they agree to the  
9 existing protective order in this case that applies.

10 On our side, we have Michael Collins here,  
11 who I understand is Counsel to Dynamic 3D, and I'll let  
12 him make his statement about agreeing to the protective  
13 order.

14 MR. COLLINS: Yes. For the record, my name  
15 is Michael Collins. I represent Dynamic 3D Geosolutions,  
16 LLC, and I do agree to be bound by the protective order in  
17 -- in this State Court case.

18 MR. AHMAD: And then, Max, I know your  
19 pro hoc is -- is pending. I can't imagine that it would  
20 be denied, but -- but while it's pending, you, too, agree  
21 to the protective order?

22 MR. GRANT: Of course, I do. And why don't  
23 we put everybody's appearances on the record.

24 So, I'm Max Grant, Latham & Watkins, on  
25 behalf of Schlumberger. With me is my colleague, Andrew

Charlotte Rutherford

7

1 Fossum, and my Co-Counsel, Craig Smyser and Land Murphy,  
2 as well as Schlumberger representatives, Robin Nava and  
3 Paula Doolin-Whitten.

4 MR. AHMAD: And on my side, obviously,  
5 Charlotte Rutherford is the witness. I'm Joe Ahmad. I  
6 represent Charlotte Rutherford together with Tim Shelby,  
7 Ashish Mahendru and Richard Specter, who is seated at the  
8 end.

9 MR. GRANT: Okay. Terrific.

10 MR. SMYSER: Richard, has your pro hoc been  
11 granted?

12 MR. SPECTER: I believe it has, yes.

13 MR. SHELBY: Yes.

14 MR. SPECTER: At the last --

15 MR. SMYSER: I -- I just couldn't remember.  
16 I knew it had been filed.

17 MR. AHMAD: He agrees to the protective  
18 order, but I think -- I think it was granted.

19 MR. SMYSER: And you agree to the protective  
20 order?

21 MR. SPECTER: Yes and yes.

22 MR. SMYSER: Thank you.

23 MR. SHELBY: Can we get the same for the  
24 in-house lawyers, I don't think they've formally entered  
25 appearances.



1 MS. WHITTEN-DOOLIN: Paula Whitten-Doolin for  
2 Schlumberger, and I'll agree to be bound by the protective  
3 order to the extent that I need to do so.

4 MS. NAVA: Robin Nava, Schlumberger, and I  
5 agree to be bound by the protective order.

6 MR. SHELBY: Thank you.

7 MR. GRANT: Okay. And I apologize, Madam  
8 Court Reporter, have we sworn the witness?

9 THE REPORTER: (Nodded head.)

10 MR. GRANT: Terrific.

11 EXAMINATION

12 BY MR. GRANT (9:09):

13 Q. Ms. Rutherford, my name is Max Grant. Can you,  
14 please, give us your full name for the record.

15 A. Charlotte Howell Rutherford.

16 Q. Okay. Now, we both represented Schlumberger back  
17 before you joined Acacia, but I'm not sure we had the  
18 opportunity to meet then. So I'm an attorney with Latham,  
19 and I'm representing Schlumberger today. I wanted to  
20 introduce myself.

21 As I understand, we're here for the limited  
22 purpose, pursuant to Judge Sandill's order, to address  
23 issues related to your, Defendant's, Anti-SLAPP Motion.

24 You're an attorney, correct?

25 A. I am.

1 Q. Okay. Do you understand what privileged  
2 information is?

3 A. I do.

4 Q. Okay. And you understand what attorney work  
5 product information is?

6 A. I do.

7 Q. Okay. Now, do you understand that during the  
8 time that you represented Schlumberger, the privilege and  
9 the protection accorded to work product, that belongs to  
10 the client, the company, Schlumberger? Do you understand  
11 that?

12 A. I do.

13 Q. Okay. So, as Schlumberger's Counsel, I'm  
14 requesting that you, as former Counsel for Schlumberger,  
15 that with regard to my questions today, I'm not seeking  
16 the substance of any privileged or work product  
17 information.

18 And on behalf of Schlumberger, I'm directing  
19 you to not to disclose, in this deposition, any privileged  
20 Schlumberger information in response to my questions; to  
21 the extent I'm asking for things like that, I'll be asking  
22 for topics, not for the substance of any information.

23 But if you believe a question calls for the  
24 disclosure of Schlumberger privileged information, then  
25 I'm directing you to let me know and not disclose it, and

1 whose name you don't recall?

2 A. No, I don't.

3 Q. Okay. Who are your colleagues at Acacia?

4 A. Acacia has a number of employees.

5 Q. Who are your colleagues at Acacia,

6 Ms. Rutherford?

7 A. Well, by "colleagues," I assume you mean  
8 employees?

9 Q. Just answer the question to the best of your  
10 ability.

11 A. Well, if you mean colleagues to be employees at  
12 Acacia, Acacia has approximately 60 employees.

13 Q. Are they all your colleagues?

14 A. I would regard them as my colleagues, yes.

15 Q. Is Gary Fischman one of your colleagues?

16 A. Yes, he is.

17 Q. Is Stephen Bonner one of your colleagues?

18 A. Stephen Bonner does not work for Acacia.

19 Q. Okay. Who does he work for?

20 A. I understand Stephen Bonner's retired.

21 Q. Okay. Did he work for Acacia?

22 A. He did at one time.

23 Q. When?

24 A. Stephen Bonner worked for Acacia in 2013.

25 Q. Can you give me the time frame?

1 A. The second half of 2013.

2 Q. Did you hire him?

3 A. I -- Acacia did hire Stephen Bonner.

4 Q. Did you hire him?

5 MR. AHMAD: Object to the form.

6 A. Again, I don't hire; Acacia hires.

7 Q. (BY MR. GRANT) Okay. Did he work in your  
8 office?

9 A. He worked in my office, yes.

10 Q. Were you involved in his recruitment?

11 A. Yes, I was involved in his recruitment.

12 Q. Were you the first person that reached out to him  
13 to try to get him to come work at Acacia?

14 MR. AHMAD: Object to the form.

15 A. No, I was not.

16 Q. (BY MR. GRANT) Who was?

17 A. A recruiter.

18 Q. Were you the first Acacia employee that spoke to  
19 him about his potential employment at Acacia?

20 A. Yes, I was.

21 Q. How many colleagues work in your Houston facility  
22 here?

23 MR. AHMAD: Object to the form.

24 A. In the Houston office, I have one, two, three --  
25 four colleagues or employees who work in the Houston

1 office.

2 Q. (BY MR. GRANT) What are their names?

3 A. Their names are Vincent Varghese. V-A --

4 THE WITNESS: Would you like me to spell it?

5 A. V-A-R-G-H-E-S-E. Gary Fischman, F-I-S-H-M-A-N.

6 Phillip Mitchell, and Debra Hexsel, H-E-X-S-E-L.

7 Q. (BY MR. GRANT) Who is the senior person in

8 Acacia's Houston office?

9 A. I am.

10 Q. Do --

11 A. If you mean senior by rank, as opposed to

12 something else.

13 Q. Who is in charge of the Houston office?

14 A. I am in charge of the Houston office.

15 Q. Do those four employees report to you?

16 A. They report to me; but some of them also have a

17 dual reporting to other people, as well --

18 Q. I understand --

19 A. -- in Acacia.

20 Q. I understand that there may be some dual

21 reporting; but each and every one of those people report

22 to you in at least one capacity, correct?

23 MR. AHMAD: Object to the form.

24 A. Yes, they do.

25 Q. (BY MR. GRANT) So, Gary Fischman, for example,

1 reports to you?

2 MR. AHMAD: Object to the form.

3 A. Gary Fischman reports to me, but he also has  
4 another reporting responsibility, as well.

5 Q. (BY MR. GRANT) Did you associate with Acacia  
6 for the purpose of suing Schlumberger?

7 A. No, I did not.

8 Q. The -- you referred to this person who is the  
9 director of Dynamic 3D whose name you didn't recall.

10 A. Uh-huh.

11 Q. Have you had any communications with that person  
12 regarding the subject matter of the 3D versus Schlumberger  
13 lawsuit? Yes or no?

14 A. No, I have not.

15 Q. Have you spoken with -- have you had any  
16 communications with Mr. Fischman regarding the subject  
17 matter of the Dynamic 3D versus Schlumberger lawsuit?

18 MR. AHMAD: I'll object --

19 MR. GRANT: "Yes" or "no."

20 MR. AHMAD: Okay. Subject to that being  
21 answered "yes" or "no," that's fine.

22 A. Yes, I have.

23 Q. (BY MR. GRANT) What was the substance of those  
24 communications with Mr. Fischman regarding the Dynamic 3D  
25 versus Schlumberger lawsuit?

1 MR. COLLINS: Objection, calls for  
2 information protected by the attorney/client privilege,  
3 also calls for attorney work product.

4 MR. AHMAD: I will join in that -- well,  
5 actually, hang on. If she answers that question, will you  
6 agree that that doesn't constitute a waiver?

7 MR. GRANT: No. No subject matter waiver,  
8 correct.

9 MR. AHMAD: I'm sorry?

10 MR. GRANT: It will not constitute a subject  
11 matter waiver.

12 MR. AHMAD: It -- if it's not a waiver of the  
13 attorney/client or attorney work product, I'm inclined to  
14 answer that. If it's -- and we're talking about  
15 Schlumberger, correct?

16 MR. GRANT: Yes.

17 MR. AHMAD: Okay.

18 MR. GRANT: I mean, it's -- it's obviously a  
19 waiver of what she's saying, but it's not -- that  
20 statement is not a basis to claim a broader waiver.

21 MR. AHMAD: Well, I don't want -- I want an  
22 agreement that it's not a waiver of anything.

23 MR. GRANT: Okay.

24 MR. AHMAD: Okay?

25 MR. GRANT: Sure.

1 decided to acquire the '319 Patent after you joined it,  
2 correct?

3 A. That is correct.

4 Q. And Acacia decided to assert the '319 Patent  
5 against Schlumberger after you had joined Acacia, correct?

6 A. Yes.

7 Q. What's the approximate date that you first saw  
8 any version of this complaint, Exhibit 4?

9 A. The first time that I read this complaint against  
10 Schlumberger by Dynamic 3D was after it had been filed.

11 Q. When was the first time you saw any version of  
12 the complaint that Dynamic 3D filed against Halliburton?

13 A. I would -- I would say within a couple of days of  
14 the complaint being filed against Halliburton, as I can  
15 best recall.

16 Q. Aren't the complaints against Schlumberger and  
17 Halliburton substantially identical?

18 MR. COLLINS: Object to form.

19 MR. AHMAD: I'll -- I'll join in that  
20 objection.

21 A. I know they both alleged patent infringement of  
22 the '319.

23 Q. (BY MR. GRANT) Well, you've read both. Can you  
24 answer my question? Isn't it true, Ms. Rutherford, that  
25 the complaints filed by Dynamic 3D against Halliburton



1 and against Schlumberger are substantially identical?

2 MR. COLLINS: Same objection.

3 MR. AHMAD: Object to the form.

4 A. I would say they're similar.

5 Q. (BY MR. GRANT) Very similar, right?

6 MR. AHMAD: Object as to form.

7 A. Again, I would say they're similar.

8 Q. (BY MR. GRANT) Now, in terms of the Halliburton  
9 complaint, I think -- well, let me ask it this way. Were  
10 you involved in drafting the Halliburton complaint?

11 A. No, I was not.

12 Q. Now, you said that you reviewed it. I want to  
13 make sure I've got this clear on the record. Did you  
14 provide any edits, "yes" or "no," to the Halliburton  
15 complaint?

16 A. No, I did not.

17 Q. Can you describe for me your involvement in the  
18 decision to acquire the '319 Patent by Acacia?

19 MR. COLLINS: Objection, calls for  
20 information protected by the attorney/client privilege and  
21 attorney work product doctrine.

22 MR. AHMAD: Max, do you mind if I confer with  
23 the client about that?

24 MR. GRANT: Not at all.

25 MR. AHMAD: Okay. Thanks.

1 THE VIDEOGRAPHER: Tape 2, off the record at  
2 10:53.

3 (Recess from 10:53 a.m. to 11:06 a.m.)

4 THE VIDEOGRAPHER: Tape 3, on the record,  
5 11:06.

6 MR. GRANT: We had a pending question, Madam  
7 Court Reporter. Could you, please, re-read it?

8 (Requested portion was read)

9 MR. AHMAD: And subject to an agreement with  
10 Counsel that that will not constitute a waiver,  
11 Ms. Rutherford can answer that question.

12 MR. GRANT: That's fine.

13 A. So, my involvement was to concur with the  
14 recommendation to acquire the '319 Patent.

15 Q. (BY MR. GRANT) Whose recommendation?

16 A. Outside Counsel and Gary Fischman, my Licensing  
17 Executive IP Counsel, along with the engineer, Phil  
18 Mitchell.

19 Q. Okay. So, you -- you received recommendations  
20 from the Collins Edmonds firm, from Mr. Fischman and from  
21 Mr. Mitchell to acquire the patent, correct?

22 A. Yes. Mr. Mitchell was working at the direction  
23 of Counsel.

24 Q. Which Counsel?

25 A. He was working at the direction of both outside

1 Counsel and in-house Counsel.

2 Q. Okay. Which in-house Counsel was he working at  
3 the direction of?

4 A. Again, Gary Fischman, the Licensing Executive IP  
5 Counsel.

6 Q. Okay. And -- and -- and that was your Licensing  
7 IP Executive, right?

8 MR. AHMAD: Object to the form.

9 Q. (BY MR. GRANT) Right? He's -- he works for  
10 you?

11 A. He works for me, and he also reports to someone  
12 else at Acacia.

13 Q. Did they provide you with a -- any one of them  
14 provide you with a presentation?

15 MR. AHMAD: And can we have the same  
16 non-waiver agreement?

17 MR. GRANT: Yeah. I'm just trying to find  
18 out what would be in a privileged log anyway. So, I'm --  
19 I'm not sure it applies, but I'm not arguing subject  
20 matter waiver based on her answer.

21 MR. AHMAD: I'm not -- I'm just trying to  
22 make it easy --

23 MR. GRANT: Sure.

24 MR. AHMAD: -- because I'm not necessarily  
25 saying there is a privilege, but I want to make it easy

1 and just agree that we're not waiving any, if it exists.

2 MR. GRANT: That's -- that can apply for the  
3 whole day.

4 MR. AHMAD: Okay. You can -- you can go  
5 ahead and answer that question subject to our non-waiver  
6 agreement.

7 A. Would you, please, repeat the question?

8 Q. (BY MR. GRANT) Did they make a presentation,  
9 any one of those three, to you?

10 A. Presentation was made by outside Counsel.

11 Q. Okay. Again, was that PowerPoint?

12 A. Yes.

13 Q. Okay. How long did that presentation last?

14 A. As best I recall, it was about an hour.

15 Q. Okay. Was Schlumberger referenced in that  
16 presentation?

17 A. Yes.

18 Q. Let's go back, if we can, briefly, to the first  
19 meeting with Austin GeoModeling. Do you have that one in  
20 mind?

21 A. Okay.

22 Q. Okay. The two inventors were there, correct?

23 A. Correct.

24 Q. And, then, there was a Mr. Schneider, who is a  
25 Licensing Executive, correct?

1 A. He's a License Executive and IP Counsel.

2 Q. Okay. And a Mr. A-- Ahorn?

3 A. Ahroon.

4 Q. Ahroon?

5 A. Eric Ahroon.

6 Q. And he's a business development person?

7 A. He is.

8 Q. Okay. And Mr. Mitchell, the engineer, was there?

9 A. Yes.

10 Q. And you were there?

11 A. Yes.

12 Q. Okay. Did either -- did you provide any legal  
13 advice to Austin GeoModeling at that first meeting?

14 A. I don't recall that I did.

15 Q. Okay. Did Mr. Schneider provide any legal advice  
16 to Austin GeoModeling at that first meeting?

17 A. I believe he did.

18 Q. Well, what was the -- what was the -- the topic,  
19 privilege log level description, of the legal advice he  
20 was providing?

21 MR. AHMAD: And --

22 MR. COLLINS: I'm -- I'm going to object that  
23 that calls for material -- or information covered by the  
24 attorney/client privilege and the attorney work product  
25 doctrine.

1 A. No, I don't recall I did.

2 Q. You didn't receive a copy of the transcript,  
3 correct?

4 A. I -- I don't recall receiving a copy of the  
5 transcript, no.

6 Q. And you never spoke to Mr. Fischman about what  
7 occurred at that hearing, correct?

8 A. Mr. Fischman told me that a hearing took place.

9 Q. My question, Ms. Rutherford, was: Did you have a  
10 conversation with Mr. Fischman about what occurred at the  
11 hearing?

12 MR. AHMAD: That's a "yes" or "no."

13 A. No.

14 Q. (BY MR. GRANT) Can you give me a list of names  
15 of people at the Collins Edmonds firm with whom you've  
16 spoken to regarding the litigation pending in Austin,  
17 either the lawsuit with -- regarding Halliburton or the  
18 lawsuit regarding Schlumberger?

19 A. Can you repeat the question, please?

20 Q. Sure. I would like the names of any attorneys at  
21 the Collins Edmonds firm with whom you've spoken to on the  
22 topic of the litigation before Judge Yeakel.

23 MR. COLLINS: Object to form. Which  
24 litigation are you talking about, Counsel?

25 MR. GRANT: Both of them.

1           A.    Well, that's why I'm confused. Your second  
2 question spoke to the litigation in front of Yeakel.

3           Q.    (BY MR. GRANT) Yes, the one that's consolidated  
4 for marketing purposes. So at least for now, it appears  
5 to be a single litigation.

6                   MR. COLLINS: No, there are two lawsuits,  
7 Counsel. Which one?

8           Q.    (BY MR. GRANT) I want to know --

9                   MR. FOSSUM: Either.

10          Q.    (BY MR. GRANT) -- either. What are the names  
11 of the people you've spoken with at Collins Edmonds  
12 regarding either of those lawsuits?

13                   MR. COLLINS: Object to form.

14          A.    So, I'm going to try to clarify your question,  
15 and if I don't understand it, please tell me. As to the  
16 '319 litigation currently pending, I have not spoken to  
17 people at the Collins firm concerning that.

18                   Those discussions occur between the attorneys  
19 at the Collins firm and my Licensing Exec IP Counsel, Gary  
20 Fischman.

21          Q.    (BY MR. GRANT) Okay. So, is it your testimony,  
22 Ms. Rutherford, that you've never been involved in any  
23 discussion or communication with anyone at the Collins  
24 Edmonds firm concerning the subject matter of either  
25 lawsuit filed by 3D GeoModeling (sic)?

1 MR. COLLINS: Object to form. You can answer  
2 if you understand the question.

3 A. I don't understand the question, so I -- I cannot  
4 answer it. Can you rephrase it? And could you do me a  
5 favor and split the two litigations up, because I get  
6 confused when you put them both in the same question.

7 Q. (BY MR. GRANT) Well, I'm trying to simplify, so  
8 let's keep them both --

9 A. Well, don't simplify it, then. Just clarify it  
10 for me, please.

11 Q. I'll keep them both in the same question. Are  
12 there -- or is it your testimony that you've spoken with  
13 no one at the Collins Edmonds firm about any lawsuit in  
14 which the '319 Patent was asserted?

15 MR. COLLINS: Object to the form.

16 A. I previously testified that I have been involved  
17 in a conversation with someone from the Collins firm in a  
18 presentation concerning the '319 Patent. I've already  
19 testified to that.

20 Q. (BY MR. GRANT) Okay. Well, you testified about  
21 that conversation that you had with them where they made  
22 the recommendation to acquire and sue, correct?

23 A. Yes.

24 Q. Okay. So, that one you were clearly involved in.  
25 And who, other than Mr. Collins, participated in those



1 considered?

2 A. I did not provide input.

3 Q. Were your views considered?

4 A. I don't recall expressing any views.

5 Q. Okay. So, you didn't provide any input and

6 nobody solicited your input on the terms of the

7 transaction. Is that what you're saying?

8 A. As best I can recall.

9 Q. Okay. Can you tell me what you know about the

10 terms of the transaction in which Acacia acquired rights

11 to the '319 Patent?

12 MR. AHMAD: I'm going to object as to

13 attorney/client privilege, common interest privilege and

14 attorney work product. Instruct you not to answer.

15 MR. COLLINS: And same objection and same

16 instruction -- instruction.

17 Q. (BY MR. GRANT) Are you going to follow that

18 instruction?

19 A. I am.

20 MR. GRANT: Okay. So you guys are asserting

21 that the terms of the deal themselves are privileged?

22 Okay.

23 Q. (BY MR. GRANT) Was there a -- "yes" or "no" -- a

24 valuation of the patent that was conducted either by

25 Acacia or its agents?

1 A. Yes.

2 Q. Okay. Did you see that? Have access to it?

3 A. I don't recall seeing it.

4 Q. Who did that valuation? Was it done internally  
5 at Acacia or by the Collins Edmonds firm?

6 MR. AHMAD: Object to the form.

7 A. I did not participate, so I don't know the answer  
8 to your question.

9 Q. (BY MR. GRANT) Was the valuation of the '319  
10 Patent included in the presentation that was made to you  
11 regarding the decision whether to acquire and assert the  
12 patent?

13 A. I don't --

14 MR. AHMAD: Object to the form.

15 A. I don't recall.

16 Q. (BY MR. GRANT) Other than Mr. Fischman, who at  
17 Acacia is interacting or has had any communications with  
18 the Collins Edmonds firm regarding the '319 Patent  
19 litigation?

20 A. To the best of my knowledge, it's Gary Fischman.

21 Q. Okay. To the best of your knowledge, nobody else  
22 at Acacia is interacting with the Collins Edmonds firm.  
23 Is that right?

24 MR. AHMAD: Objection, form.

25 A. Well, I -- I am aware that the inventors have

1 discussions with Mike Collins, but, again, they're not at  
2 Acacia, right?

3 Q. (BY MR. GRANT) And I'm talking about Acacia.

4 A. Uh-huh.

5 Q. Okay.

6 A. And -- and I would like to add to that, Phil  
7 Mitchell, who is at Acacia and who is an engineer.

8 Q. So, Mr. Mitchell is an engineer; he doesn't  
9 provide any legal advice, does he?

10 A. He's an engineer.

11 Q. He doesn't provide any legal advice, does he?

12 MR. AHMAD: I'm -- I'm going to object to  
13 form.

14 Q. (BY MR. GRANT) Well, he works for you. Are you  
15 aware of him providing any legal advice in the conduct of  
16 his duties?

17 A. No.

18 MR. AHMAD: Same objection.

19 Q. (BY MR. GRANT) No. Okay.

20 Is Mr. Fischman responsible for the  
21 strategy and conduct of the '319 Patent litigation?

22 MR. AHMAD: I'll object as to form.

23 A. On behalf of Acacia.

24 Q. (BY MR. GRANT) Yeah, the client. Who's the  
25 client?

1 A. The client is Dynamic 3D.

2 Q. Okay. And who is the person who's directing the  
3 litigation on behalf of Dynamic 3D? What's their name?

4 A. I see it being outside Counsel and Gary Fischman.

5 Q. Okay. Is there anybody other than Gary Fischman,  
6 putting aside outside Counsel --

7 A. Uh-huh.

8 Q. -- who's responsible for the conduct of the  
9 litigation on behalf of Dynamic 3D?

10 A. Well, Gary Fischman, now, also reports to Jaime  
11 Siegel. S-I-E-G-E-L, I think, is the spelling.

12 Q. Yeah, I appreciate that. Maybe I'm not  
13 understanding your answer.

14 My question isn't who does he report to, my  
15 question is who at Acacia is responsible for conduct of  
16 the litigation. Is it your answer that Mr. Siegel is also  
17 responsible?

18 MR. AHMAD: Hang -- hang on for a second.  
19 Just so the record is clear, I -- I think we've left the  
20 bounds of this lawsuit and the -- the Anti-SLAPP Motion --

21 THE WITNESS: Uh-huh.

22 MR. AHMAD: -- and we're going into, I -- I  
23 think, issues related to your disqualification motion in  
24 the Austin lawsuit, you know.

25 So unless there's some relevance here -- you

1 know, I've let it continue for a while -- but unless  
2 there's some relevance here, I'm going to have to object  
3 this is just harassing the witness.

4 MR. GRANT: Yeah. It's nothing close to  
5 harassing the witness. The relevance is that a violation  
6 of ethical duties is one of the exclusions of conduct that  
7 might arguably otherwise be protected by the Anti-SLAPP  
8 Statute.

9 So what I'm trying to do is determine exactly  
10 what her involvement is and understand where those bounds  
11 are.

12 MR. AHMAD: And -- and I think --

13 MR. GRANT: And if you want to instruct the  
14 witness not to answer, you can do that --

15 MR. AHMAD: I haven't done that, yet.

16 MR. GRANT: -- but -- but I'm going to ask  
17 that question.

18 MR. AHMAD: And that's a fine question. I  
19 think we're going into other people's conduct. So, I  
20 mean, I'll let it continue, but at some point, this is  
21 clearly beyond the Anti-SLAPP Motion.

22 MR. GRANT: And we disagree.

23 MR. COLLINS: We're --

24 MR. GRANT: I'm -- I'm entitled to know who's  
25 responsible, if it's not her, and all I'm trying to do is

1 for a time, by Acacia, itself, correct?

2 A. I don't know. I know that the '319 was assigned  
3 to Dynamic 3D. That was handled by Gary.

4 Q. From where was it assigned?

5 A. From Austin Geo.

6 Q. So, to your knowledge, you don't have any  
7 knowledge as to whether Acacia owned the patent in between  
8 its ownership by Dynamic 3D and Austin GeoModeling?

9 A. I don't know.

10 Q. Okay.

11 A. That was handled, again, by Gary Fischman.

12 Q. Is the -- the '319 Patent an asset of the energy  
13 practice?

14 A. It's an asset of Dynamic 3D.

15 Q. Yes. And -- and I'd appreciate a "yes/no"  
16 answer. Is it an asset of the energy practice at Acacia?

17 A. Energy practice is a group of people. It's not a  
18 legal entity.

19 Q. Okay.

20 (Exhibit No. 5 was marked.)

21 THE WITNESS: Thank you.

22 MR. AHMAD: Is this 5?

23 MR. FOSSUM: Yes.

24 Q. (BY MR. GRANT) Okay. What's Exhibit 5,  
25 Ms. Rutherford?

1 A. Exhibit 5 appears to be my profile on LinkedIn.

2 Q. Okay. Did you input the data that is presented  
3 in Exhibit 5?

4 A. I did.

5 Q. The team of people that you assembled as it's  
6 referred to here in your LinkedIn profile, are those the  
7 people that you listed as being resident in the Acacia  
8 Houston office?

9 A. Which people are you referring to?

10 Q. First paragraph, five lines down, I want you to  
11 read the sentence that begins with "Charlotte has  
12 assembled."

13 A. Okay. Charlotte has assembled a team of people  
14 with the right kind of track record for success, their  
15 having been successful in the energy space working for  
16 companies such as Shell, Conoco, Schlumberger, Fluor and  
17 Tenneco.

18 Q. Who is the team of people that you assembled,  
19 Ms. Rutherford?

20 A. I'll repeat their names, I mentioned them  
21 earlier: And that's Vincent Varghese, Phil Mitchell, Gary  
22 Fischman and Debra Hexsel.

23 Q. Okay. And beyond yourself, do any of those  
24 people -- are any of those people ones who had worked for  
25 Schlumberger?

1 A. No.

2 Q. Are there any people who worked in the Houston  
3 office at any time while you were there who worked for  
4 Schlumberger?

5 A. Yes.

6 Q. Who's that?

7 A. Stephen Bonner.

8 Q. Was Stephen Bonner involved in the evaluation or  
9 acquisition of the '319 Patent?

10 A. Not to my knowledge.

11 Q. Was Stephen Bonner involved in any way in any  
12 analysis relating to the '319 Patent litigations?

13 A. Not to my knowledge.

14 Q. Okay. It says that prior to joining Acacia, you  
15 held some executive positions. Is that right?

16 A. Yes, I did.

17 Q. Were you -- were you an officer of Schlumberger?

18 A. No, I was not.

19 Q. But you did manage its global IP practice?

20 A. Yes, I did.

21 Q. Okay. Now, did Stephen Bonner do work for Gary  
22 Fischman?

23 A. I'm sure he did.

24 Q. Do you know if he worked at Mr. Fischman's  
25 direction relating to the '319 Patent in any way?



1 A. I do not know.

2 Q. Okay. Just so we make sure we hit the high  
3 points. You got your law degree from Loyola, correct?

4 A. Yes.

5 Q. Okay. And what State Bars are you a member of?

6 A. Seven State Bars, some active and some inactive.

7 Q. Which State Bars? And if you can delineate which  
8 ones are active, then --

9 A. Sure.

10 Q. -- I'd appreciate it.

11 A. Sure. Be glad to. All right. So New Jersey is  
12 active. Pennsylvania is inactive. New York is active.  
13 Colorado is inactive. D.C. Circuit Court of Appeals is  
14 active. Texas is active. Louisiana is inactive.

15 Q. And the PTO?

16 A. It's not a State Bar, but, yes, I am a member of  
17 the U.S. Patent Trademark Office Bar.

18 Q. How long have you been a member of the Texas  
19 State Bar?

20 A. My profile says -- so I'll have to rely on that  
21 because I can't rely on memory alone -- it says 1988.

22 Q. Okay. And you reside in Texas, correct?

23 A. I do.

24 Q. Okay. You were a, by this description, a senior  
25 intellectual property attorney at Schlumberger from July,

1 Q. Sure. And that's a non-legal role, correct?

2 A. The business development is.

3 Q. Okay. And you said the vast majority of what  
4 you've done at Acacia is non-legal, because you've been  
5 focusing on business development, correct?

6 A. Vast majority of my time has been business  
7 development.

8 Q. What are the companies that you've spoken with in  
9 your role in business development at Acacia since you've  
10 been there?

11 MR. AHMAD: Objection. I think this is kind  
12 of outside the scope of certainly the motion and the  
13 lawsuit, and calls for trade secret information. So, I'm  
14 going to have to object -- and it's, for that reason, I  
15 think harassing.

16 So, I would object and instruct her not to  
17 answer unless there's some tie-in to this case or  
18 Schlumberger.

19 MR. GRANT: Yeah. The -- the tie-in has to  
20 do with the claims relating to fiduciary responsibility.  
21 And since she's asserting that this has been the context  
22 of her role, I'm trying to determine where it falls within  
23 her ongoing obligations to Schlumberger. So, if you want  
24 to instruct her not to answer, that's fine.

25 MR. AHMAD: I'm --

1 MR. GRANT: But I'm -- that's the context to  
2 the extent you needed it.

3 MR. AHMAD: I appreciate that, and I will  
4 instruct the witness not to answer.

5 Q. (BY MR. GRANT) Okay. Are you going to follow  
6 that instruction?

7 A. I am.

8 Q. Was the meetings that you had with Austin  
9 GeoModeling in your non-legal business development  
10 context?

11 A. My meetings with Austin Geo, I would not  
12 understand that to be business development because Austin  
13 Geo had already come to Acacia before I joined Acacia.  
14 So, Austin Geo was trying to convince Acacia to partner  
15 with them and acquire their patent to license it.

16 Q. Okay. Does that mean that your involvement in  
17 the meetings with Austin GeoModeling were -- was in a  
18 legal role?

19 A. I would say, yes.

20 Q. And the -- there's no doubt, is there, that the  
21 presentation that you received from the Collins Edmonds  
22 firm related to the '319 Patent litigation, that was  
23 something that you received in a legal role, correct?

24 A. I would say, yes.

25 Q. Now, you were the Chief IP Counsel at

1 Schlumberger from 2009 to May, 2013, correct?

2 A. My -- as I mentioned, my title varied. It was  
3 Director of Intellectual Property. I think they -- after  
4 the title changed, it was, then, Deputy General Counsel  
5 for Intellectual Property.

6 Q. When did that title change occur, approximately?

7 A. I can't recall.

8 Q. Did your responsibilities change when your title  
9 changed?

10 A. No, but my responsibilities changed while I was  
11 in those roles.

12 Q. While you served as Deputy General Counsel for  
13 IP, and in the other roles that you served at  
14 Schlumberger, you had access to all aspects of  
15 Schlumberger's confidential and privileged information  
16 regarding intellectual property, correct?

17 MR. AHMAD: Objection, form.

18 A. I would not characterize it that way.

19 Q. (BY MR. GRANT) You had access to Schlumberger  
20 confidential and privileged information relating to the  
21 company's technology development, right?

22 MR. AHMAD: Objection, form.

23 A. Again, I did not have access. My Chief IP  
24 Counsels or Managing IP Counsels, they had access to the  
25 company's confidential information. Them having access

1 doesn't mean I have access.

2 Q. (BY MR. GRANT) So, you're drawing a distinction  
3 between your direct reports having access to information  
4 and you. Is that correct?

5 A. I am.

6 Q. Okay. Did you have access to any Schlumberger  
7 confidential or privileged information regarding  
8 technology development?

9 A. Again, I -- I would -- if I had access, it would  
10 be through my reports, what they decided to show me or not  
11 show me, discuss with me or not discuss with me.

12 Q. Is the answer to my question "yes" or "no,"  
13 ma'am?

14 A. I -- I can't agree with you the way you're  
15 characterizing it.

16 Q. Did you have access to any Schlumberger  
17 confidential or privileged information regarding  
18 technology development?

19 A. Technology development? I don't recall having  
20 access.

21 Q. Did you have any access to Schlumberger  
22 confidential and privileged information regarding its  
23 patent portfolio?

24 A. As to the number of patents that my department  
25 was filing, yes.

1 dad and me fishing. They were pictures.

2 Q. (BY MR. GRANT) Is that the one you gave to your  
3 lawyers?

4 A. Yes.

5 Q. Okay. Did you attach that to any other computers  
6 in between the time that you left Schlumberger or loaded  
7 the information from your Schlumberger computer and gave  
8 it to the lawyers in this case?

9 A. Are you talking about the jump drive with my dad  
10 and me fishing?

11 Q. Yeah, that's the one I'm talking about. That's  
12 the one we're talking about right now.

13 A. All right. All right. So can you ask that  
14 question, again?

15 Q. Sure. From the time that you downloaded  
16 information from your Schlumberger computer to that thumb  
17 drive, from that time to the time that you gave it to the  
18 lawyers representing you in this case, did you attach that  
19 thumb drive to any other computers?

20 A. I don't recall if I did.

21 Q. So, to your knowledge, your best recollection, as  
22 you sit here today, testifying under oath, is that you  
23 can't recall attaching that thumb drive that your lawyers  
24 got to any computer?

25 A. I can't recall.



1 Q. Okay. Let's go to the third thumb drive. Is  
2 that the one -- let's -- there's two left, one with Acacia  
3 information and one with Outlook and other things, right?

4 A. All right.

5 Q. Let's deal with the Acacia one next, okay?

6 A. Okay.

7 Q. You downloaded that Acacia press release and job  
8 descriptions from your Schlumberger laptop to the thumb  
9 drive, correct?

10 A. I transferred the information over to the thumb  
11 drive.

12 Q. Did you draft those on your Schlumberger laptop?

13 A. I think I may have drafted the press release on  
14 my Schlumberger laptop. The position descriptions, I  
15 received from Acacia.

16 Q. Can you speak up so we can make sure we can hear  
17 your testimony.

18 A. Uh-huh. The position descriptions, I -- draft  
19 position descriptions I got from Acacia based on other  
20 descriptions they already had.

21 Q. Okay.

22 A. And I -- my plan was to modify them for my team.

23 Q. So, you received the position descriptions for  
24 the Energy Group -- or at least some of them at Acacia  
25 while you were still working at Schlumberger?

1 A. Yes, I believe it was after I gave notice and  
2 before I left.

3 Q. And did they e-mail them to you? Is that how you  
4 got them?

5 A. I believe they went to my Google account, my  
6 Gmail.

7 Q. Did they e-mail them to you?

8 A. Yes.

9 Q. And did you download them on your Schlumberger  
10 laptop to its hard drive?

11 A. I believe I did.

12 Q. In addition to the Acacia press release that you  
13 drafted on your laptop, and the Acacia position  
14 descriptions that you downloaded onto your laptop, was  
15 there any other Acacia information that you had stored on  
16 your Schlumberger laptop?

17 A. There may have been a couple of Outlook contacts  
18 with e-mails for people at Acacia.

19 Q. Anything else?

20 A. No, not that I recall.

21 Q. Did you modify the position descriptions on your  
22 Schlumberger laptop in any way?

23 A. I can't recall.

24 Q. Other than the files that we've just referenced,  
25 was there anything else that you downloaded from your



1 Schlumberger laptop to what we're calling the third thumb  
2 drive?

3 A. So, the -- the -- talking about the third thumb  
4 drive being the one with the Acacia press release and the  
5 position descriptions?

6 Q. The one we've been talking about.

7 A. Well, I think I've already told you, on that  
8 thumb drive or jump drive, I also downloaded some of my  
9 personal information, like my financial information.

10 Q. Okay.

11 A. You recall I mentioned paychecks and stock  
12 options and Schlumberger benefits.

13 Q. Anything else?

14 A. That's all I can recall.

15 Q. Let's talk about the fourth thumb drive that you  
16 attached to your Schlumberger computer in the time  
17 immediately preceding your departure.

18 What did you download onto that from your  
19 Schlumberger laptop?

20 A. That jump drive I downloaded my Outlook contacts  
21 and my iTunes.

22 Q. Anything else?

23 A. That's all I recall.

24 Q. Where is the third thumb drive with the Acacia  
25 information and some of your personal financial

1 Q. What's your cable company?

2 A. Comcast.

3 Q. Comcast. And when did he come to your home to  
4 install your WiFi?

5 A. I believe that was over Memorial Day weekend. So  
6 it would be that Friday, Saturday, Sunday, Monday, in that  
7 time frame.

8 Q. So, that's the weekend just prior to your  
9 departure from Schlumberger?

10 A. Yes, and after I had given notice.

11 Q. Other than -- well, did anybody access your  
12 computer, other than you, in the weeks immediately  
13 preceding your departure from Schlumberger?

14 A. Only me.

15 Q. Okay.

16 A. I don't think I asked Gary de Leon for any  
17 assistance.

18 Q. Okay. So in the -- in the month of May, 2013,  
19 the only person who was accessing your Schlumberger laptop  
20 was you, correct?

21 A. Again, my answer is, yes, unless Gary de Leon  
22 helped me that month. I often had PC problems, and he was  
23 very helpful. I don't recall if he helped me in May or  
24 not.

25 (Exhibit No. 10 was marked.)

1 Q. (BY MR. GRANT) Okay. We're handing you what's  
2 been marked as Exhibit 10. What's that, Ms. Rutherford?

3 A. Appears to be a press announcement about Acacia  
4 launching a Houston office and energy practice.

5 Q. Well, who was the person responsible for that  
6 launch?

7 A. I was responsible for the launch of the Houston  
8 office for Acacia.

9 Q. Okay. And Houston's -- rather -- strike that.  
10 Acacia's ener-- energy practice is directed  
11 from its Houston office, correct?

12 A. It is today.

13 Q. Has it ever been different from today?

14 A. Yes.

15 Q. When was -- when was Acacia's energy practice not  
16 directed out of its Houston office?

17 A. Before I joined Acacia.

18 Q. So, at least since June 3rd, 2013, Acacia's  
19 energy practice has been directed by you out of its  
20 Houston office, correct?

21 A. By me, and over time out of the Houston office.

22 Q. And that's because you didn't have an office for  
23 a while, it was just you -- were you working out of home  
24 until they opened the office?

25 A. No, we were office sharing with a law firm.

1 Q. Which law firm?

2 A. Williams Morgan.

3 Q. Now, by the way, you said earlier that  
4 Mr. Fischman, his reporting relationships changed several  
5 weeks ago or in the last month. When did he join Acacia,  
6 approximately?

7 A. He joined Acacia shortly after I did.

8 Q. Okay. Did you interview him?

9 A. I did.

10 Q. Did you make the decision to hire him?

11 A. I made the recommendation to hire him.

12 Q. Okay. And he was, at that time when he first  
13 joined Acacia, a direct report of yours, correct?

14 A. He was.

15 Q. And he remained a direct report at least through  
16 about a month ago, correct?

17 A. Again, he has a dual report.

18 Q. Yeah, I understand. And so -- but that dual  
19 report is the last month?

20 A. Roughly the last month --

21 Q. Okay.

22 A. -- or two.

23 Q. Why did his reporting relationship change in the  
24 last month or so?

25 MR. COLLINS: I'm going to object to that.

1 Q. Did they describe what responsibilities you would  
2 be charged with should you be offered an acceptable --

3 A. It was my understanding that Acacia's business  
4 model is to acquire and license patents. So, my  
5 understanding is my job would be to acquire and license  
6 patents in the energy space.

7 Q. And I think we established this, but let's make  
8 sure I got it clear. You communicated, subsequent and  
9 presumably before that face-to-face interview, with  
10 Acacia, using your Schlumberger supplied laptop?

11 A. I don't know if I used my Schlumberger laptop for  
12 those communications or not.

13 Q. Did you e-mail -- well, did you e-mail -- use any  
14 other device for sending e-mails in the February to May,  
15 2013, time frame?

16 A. Could you repeat your question, please?

17 Q. Did you use any other device, other than your  
18 Schlumberger issued laptop, in the February to May, 2013,  
19 time frame for sending e-mails?

20 A. I had other devices to send e-mails besides my  
21 Schlumberger laptop.

22 Q. What were they?

23 A. My iPad and my iPhone.

24 Q. Before you joined Acacia, was there an energy  
25 practice there?

1 A. Yes.

2 Q. Who was in charge of it?

3 A. I'm not sure who was in charge.

4 Q. Had it acquired any patents?

5 A. I believe they had acquired at least one patent,  
6 and I am aware that they were looking at other patents.

7 Q. What materials did you provide to Acacia during  
8 your interview and application process?

9 A. I may have given them a copy of my resume.

10 Q. Anything else?

11 A. Not that I can recall.

12 Q. Did you perform any work for or on behalf of  
13 Acacia or any affiliate while -- well, prior to May 29,  
14 2013?

15 A. The only work that I did in connection with  
16 Acacia, up until that time, was working on the press  
17 release, which we've talked about, and the position  
18 descriptions of the energy team.

19 Q. When did you accept Acacia's offer to work there?

20 A. On April 10, 2013.

21 (Conference out of the  
22 hearing of the Reporter)

23 Q. (BY MR. GRANT) In your motion, the Exhibit 1  
24 that we talked about, there's discussion about attorneys'  
25 fees and your potential -- or arguable entitlement to

1 attorneys' fees. Who's paying the attorneys' fees  
2 associated with this case?

3 A. The attorney fees for the case by Schlumberger  
4 against me --

5 Q. This case.

6 A. -- is being paid by Acacia.

7 Q. Are you paying any of the fees or costs  
8 associated with this lawsuit?

9 A. No, I am not.

10 Q. Have you been told that you will have any  
11 obligation for fees or costs related to this lawsuit?

12 MR. AHMAD: I'm going to object. I think  
13 that may be calling for a privileged matter, and I'll  
14 instruct her not to answer. I mean, I think you're  
15 entitled to know where she's getting the money from or  
16 who's paying it, but --

17 MR. GRANT: Fair enough. Let me rephrase it.

18 Q. (BY MR. GRANT) Do you have any obligation for  
19 the fees and costs associated with this case, contingent  
20 or otherwise?

21 A. Not that I'm aware of.

22 Q. How many times did you fly to California for  
23 face-to-face interviews with Acacia personnel?

24 A. Repeat your question, please.

25 Q. How many times did you meet with Acacia personnel